

The following questions can all be answered through reference to Federal Acquisition Regulation (FAR) clause 52.212-4 “Contract Terms and Conditions – Commercial Items” and the sample Standard Form (SF 26), both of these documents are attached. Because this assignment is in place of a paper, and because you have several weeks to complete it, I’m looking for full and complete answers that are well thought out and well written. Less complete or well thought out answers may receive partial credit.

That said, I’m not looking for legally perfect responses. The goal is for you to look at the type of contract clause which you may realistically encounter in your career and figure out how to read, understand, and address problems related to that clause.

Background

The US Army is in the process of up-armoring its remaining stock of standard issue Humvees. In support of this effort, the US Army has contracted with several small businesses to perform the necessary individual tasks. The following companies have been awarded contracts, which form a mini-supply chain dedicated to meeting this need. The essential elements of this chain are as follows:

1. Ore Grabber is responsible for sourcing and refining raw ore into usable ingots.
2. Hammer’s Hammers is responsible for shaping those ingots into plates of reinforced steel.
3. Drillers United is responsible for drilling the necessary rivet holes into the reinforced steel to allow for joining of separate plates.
4. Installers Incorporated is responsible for riveting the steel plates onto the Humvees.

Whenever a product is delivered from one company to the next in the chain, a Government Contracting Officer Representative (COR) inspects the items and ensures that they satisfy the requirements of the contract. The contract requires strict adherence to Military Specifications (MIL-SPEC) and Military Standards (MIL-STD)

There are also several additional companies involved in the overall process, for example, the company which transports the Humvees from their home base to the upgrade facility, the company which actually prepares the Humvee for the upgrade, and etc. Those independent supply chains do not

factor into this scenario, but you should be aware of the fact that multiple supply chains may coexist without impacting one-another until late in the service/supply process.

For the purposes of the following questions you are the CEO of Drillers United (DU).

DU receives 100 sheets of steel on or before the 5th day of each month from Hammer's Hammers (HH). DU is then responsible for drilling the appropriate rivet holes and delivering the drilled sheets to Installers Incorporated (II) on or before the 10th day of the following month.

Between labor, equipment, shipping, and overhead (e.g. the cost of running the non-productive portions of your office [management, legal, HR, etc.], providing your employees with health insurance and a retirement plan, and paying for the annual company paintball tournament) it costs \$1,000 to drill each sheet of steel. However, DU also (properly) incorporated a profit cost of \$250 into each sheet of steel. Once that is taken into account the total cost to the US Army for each sheet of drilled steel is \$1,250.

Question 1 (25pts): On April 10th you delivered a batch of 100 steel sheets to II, as required by the contract. On April 11th the COR notifies you that he is rejecting 25 of the tendered sheets of steel.

The COR provided the following documentation along with his rejection:

The contract states that the rivet diameter to be used by II is 1/8 inch. A review of MIL-STD 40007 shows that a 1/8 inch rivet diameter requires that the rivet hole be a minimum of 0.128 inches and no more than a maximum of 0.133 inches. The rivet holes on the requested sheets measured between 0.097 and 0.102 inches, which is below the minimum required for this contract.

You suspect that your lazy nephew accidentally calibrated his machine for a rivet diameter of 3/32 inches, but you can't prove it. Vowing never to having this type of issue again, you move your nephew upstairs into the main office and assign him some easy clerical functions to handle.

What subpart of FAR 52.212-4 allows the Government to reject these sheets of steel? As a result of this rejection, what may the Government require that DU do, and how might that requirement impact DU?

Question 2 (25pts): On April 7th the CEO at Ore Grabber (OG), an old friend, calls and warns you that OG has sourced an inferior quality of steel and the COR has rejected their last three tenders. He anticipates that it will take at least six weeks for this issue to be corrected. You then call the CEO at HH and he tells you that, not only haven't they received any ingots to shape, it takes a minimum of three weeks to properly shape the ingots once they are accepted by the COR. You also know that it takes a full four weeks for DU to properly drill the rivet holes.

You received a batch of steel sheets on April 5th, and are currently drilling them for your May 10th delivery. But if the May 5th sheet delivery is delayed by the times quoted by OG and HH, and together with your processing time, you will miss your next delivery by about five weeks. This, you imagine, will likely make the Contracting Officer extremely cross, which is very bad for a whole host of reasons.

What subpart of 52.212-4 would serve to protect DU in this situation, why? If you are going to rely on that subpart, what steps must you take to ensure that you are protected to the fullest extent possible?

Question 3 (25pts): On May 10th you tender for acceptance 100 sheets of drilled steel plates. After inspection the COR accepts the entirety of the delivery. On May 15th you sit down to write and submit your invoice to the Government for the accepted shipment.

What subpart of 52.212-4 describes what must be contained within your invoice? Draft that invoice (I'm looking for substance not format). If it requires information that I have not provided you (e.g. an account number) feel free to make it up.

Question 4 (25pts): The Government reviews your May 15th invoice and promptly remits payment on June 1st. However, upon checking your corporate balance statements on June 2nd, you discover that you have been overpaid \$500,000.

What subpart of 52.212-4 describes what you should do now? Draft any required documentation.

Question 5 (25pts): The US Army manages to find another source of steel sheets, and your May shipment arrives on May 12th, only 7 days late. You know that it's going to take you a full four weeks to complete the task, and then another 3-5 days to package and deliver the steel sheets to II. Which means that you won't be done until June 17th.

What subpart of 52.212-4 would allow the delivery deadline to be modified? Draft the appropriate request to the Contracting Officer which references the appropriate subpart and explains your rationale.

Question 6 (25pts): In response to the letter you sent under Question 2, the Contracting Officer calls and tells you that she's too busy to process a formal written modification, but that you shouldn't worry about it. Just make sure that you deliver the steel sheets by June 17th. Forgetting everything your old business law professor taught you, you accept this verbal promise and get to work on processing the steel sheets.

On June 12th you receive a notice from the Contracting Officer that she is terminating your contract for cause (originally titled "termination for default" it is still affectionately known as a T4D) because you have missed your delivery deadline of June 10th.

What subpart of 52.212-4 governs Terminations for Cause, and what penalties might DU suffer if the Government follows through on this Termination?

What subpart of 52.212-4 governs a Termination for the Government's Convenience (also known as a T4C), and why might that termination be better for DU? How would you attempt to convert the Termination for Cause into a Termination for the Government's Convenience?

Question 7 (25pts): The threat of termination is ultimately withdrawn by the Government and the contract continues on under the original terms and conditions.

On August 1st you receive a demand for payment from the Contracting Officer under 52.212-4(i)(6)(ii). Apparently, an audit of the contracting office determined that DU received an overpayment of \$500,000 as part of the payment for the invoice submitted on May 15th. The demand letter says that DU owes the government \$5,000 plus interest as calculated from the date the payment was received on June 1st.

You remember handling this issue in June, and asking your nephew to mail a check and the drafted documentation to the Contracting Officer (see Question 4). Quickly checking the DU corporate account you determine that the \$500,000 was withdrawn in June. Unfortunately, a deeper investigation reveals the following: the \$500,000 was taken out of the account in the form of a check that was payable to your nephew; the letter to the Contracting Officer was never mailed, and is still sitting on your nephew's desk; and your nephew hasn't been seen in the office since sometime in June.

What subpart of 52.212-4 governs the amount of interest you owe to the government? What steps should you take now to protect DU?

Question 8 (25pts): On August 15th the Contracting Officer exercises the first contract option. This is a pre-negotiated extension on the contract, which adds another five deliveries of 100 steel sheets in each of the months between September 2017 and January 2018. As part of this option the price per unit increases by \$100, which means that DU is now receiving a profit of \$350 for each sheet of steel delivered.

Unfortunately, at around the same time, you end up having to take out a loan to repay the government for the \$500,000 your nephew absconded with (he's still on the run). As part of the loan terms and conditions, the bank wants the payments owed to DU by the government for this contract to go right to the bank.

Does 52.212-4 permit the bank to receive payments that are owed to DU by the government? Why would the bank want this type of arrangement? What are the pros/cons for DU under this type of situation?